



FH

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

---

In the Matter of



CORRECTED DECISION

KIN/142256

---

*The only correction has been made to finding of fact #9 to reflect the correct date of October 17, 2012. All other findings of fact and conclusions of law remain unchanged. The order and time to comply also remains unchanged.*

**PRELIMINARY RECITALS**

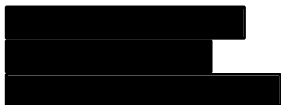
Pursuant to a petition filed July 09, 2012, under Wis. Stat. § 48.57(3m)(f), and Wis. Admin. Code § DCF 58.08(2)(b), to review a decision by the Perez-Pena Limited in regard to Kinship Care, a hearing was held on November 07, 2012, at Milwaukee, Wisconsin.

The issue for determination is whether Perez- Pena Limited (the agency) correctly terminated Petitioner's Kinship Care benefits.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:



Respondent:

Department of Children and Families  
201 East Washington Avenue  
Madison, Wisconsin 53703

By: Miguel Barillas, Kinship Care Worker  
Bureau of Milwaukee Child Welfare  
1555 Rivercenter Drive  
Milwaukee, WI 53212

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Milwaukee County.

2. Petitioner is the maternal grandmother of SG, who has been living with Petitioner since 2008, when SG's mother, JH, was convicted of being a party to the delivery of cocaine and sentenced to three years of initial confinement. Petitioner has been receiving Kinship Care benefits since that time. (Petitioner's testimony; testimony of JH; testimony of Mr. Barillas)
3. The whereabouts of SG's father are unknown. (Exhibit 4)
4. On June 6, 2012, the agency conducted a reassessment of Petitioner's case, which included an interview of Petitioner and JH, at Petitioner's home. (Exhibit 4, testimony of Mr. Barillas)
5. JH lied to the assessor about her substance abuse. (Testimony of JH)
6. On July 6, 2012, the agency sent Petitioner a notice indicating that her Kinship Care payments were no longer approved because SG is not at risk of being a child in need of protection or services, as defined in Wis. Stats. §48.57(3m)(am)2. (Exhibit 5)
7. JH was granted an early release to extended supervision in 2009, after she had served 18 months of her initial confinement time. JH has since been struggling with marijuana addiction. (Exhibit 4; testimony of JH)
8. The Department of Corrections (the Department) took JH into custody in October 2010 and kept her on a hold until January 2011, at which time the Department referred JH to Horizon House for drug treatment, which she completed on April 30, 2011. (Testimony of JH)
9. JH has continued to use marijuana. Consequently, on October 17, 2012, the Department of Corrections referred her to the Howard L. Fuller Education Foundation's ¾ way house, which does not allow children to reside there. JH's goal is to graduate to META house, where she will be able to care for her children. (Testimony of JH; Exhibit 6)
10. JH has recently been diagnosed with depression and anxiety. (Testimony of JH)

### **DISCUSSION**

The Kinship Care benefit is a public assistance payment of \$220 per month per child paid to a qualified relative who bears no legal responsibility to support the child. In Wisconsin, this benefit replaces the former Non-Legally Responsible Relative (NLRR) Aid to Families with Dependent Children (AFDC) payment. To be eligible for the payments, the relative must meet all of the conditions set forth in Wis. Stat. §§48.57(3m)(am)(1-5) or 48.57(3n)(am)(1-6). Subsection (3m) concerns Children in Need of Protection or Services (CHIPS) and subsection (3n) concerns guardianship cases.

It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. State v. Hanson, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). In a case involving the termination of benefits, the agency has the initial burden to prove the Petitioner no longer meets eligibility criteria.

In this case Petitioner does not yet have guardianship, so Petitioner is not eligible to receive Kinship Care benefits under Wis. Stats. §48.57(3n).

This case turns on whether Petitioner meets eligibility criteria under Wis. Stats. §48.57(3m)(am)(1-5) which states in pertinent part:

...A county department and, in a county having a population of 500,000 or more, the department shall make payments in the amount of \$220 per month to a kinship care relative who is providing care and maintenance for a child if **all** of the following conditions are met:

1. The kinship care relative applies to the county department or department for payments under this subsection and the county department or department determines that there is a need for the child to be placed with the kinship care relative and that the placement with the kinship care relative is in the best interests of the child.
2. The county department or department determines that the child meets one or more of the criteria specified in s. 48.13 or 938.13, that the child would be at risk of meeting one or more of those criteria if the child were to remain in his or her home or, if the child is 18 years of age or over, that the child would meet or be at risk of meeting one or more of those criteria as specified in this subdivision if the child were under 18 years of age.

*§48.57(3m)(a)2(am), Wis. Stats.  
Emphasis Added*

*The Need for Placement and the Best Interests of the Child*

The Wisconsin Administrative Code, at *§DCF 58.10(1)*, describes the “need” for placement as follows:

...The agency shall determine that the child needs the kinship living arrangement by determining at least one of the following:

- a) The child's need for adequate food, shelter and clothing can be better met with the relative than with the child's parent or parents.
- b) The child's need to be free from physical, sexual or emotional injury, neglect or exploitation can be better met with the relative than with the child's parent or parents.
- c) The child's need to develop physically, mentally and emotionally to his or her potential can be better met with the relative than with the child's parent or parents.
- d) The child's need for a safe or permanent family can be better met with the relative than with the child's parent or parents.

It is Perez-Pena’s assertion that there is no need to place SG with Petitioner. Perez Pena bases this conclusion upon the argument that JH was employed and able to pay her own rent and upon the undisputed fact that JH maintained daily contact with SG and lived near-by.

However, JH has struggled with substance abuse issues, a fact that she kept from the assessor. Her substance abuse issue is serious enough that the Department of Corrections has referred her to inpatient treatment at Horizon House, which was not successful in the long term and more recently it has referred JH for counseling through the Howard L. Fuller ¾ way house, which does not allow children to live there. Clearly, JH’s substance abuse places her at risk of going into custody or in -patient treatment. As such, SG’s need to be free from neglect and her need for a safe a permanent family would be better met with Petitioner than with JH. Thus, per the criteria set forth above, Petitioner has established that there is a need for the child to be in Petitioner’s care and that it would be in the child’s best interests.

*The risk that NLE would meet the criteria under Wis. Stats. §48.13*

Wis. Stat. §48.13, which provides for jurisdiction over children alleged to be in need of protection or services and states in relevant part:

The court has exclusive original jurisdiction over a child alleged to be in need of protection or services which can be ordered by the court, and:

- (1) Who is without a parent or guardian;
- (2) Who has been abandoned;

- (2m) Whose parent has relinquished custody of the child under s. 48.195 (1);
- (3) Who has been the victim of abuse, as defined in s. 48.02 (1)(a), (b), (c), (d), (e) or (f), including injury that is self-inflicted or inflicted by another;
- (3m) Who is at substantial risk of becoming the victim of abuse, as defined in s. 48.02 (1)(a), (b), (c), (d), (e) or (f), including injury that is self-inflicted or inflicted by another, based on reliable and credible information that another child in the home has been the victim of such abuse;
- (4) Whose parent or guardian signs the petition requesting jurisdiction under this subsection and is unable or needs assistance to care for or provide necessary special treatment or care for the child;
- (5) Who has been placed for care or adoption in violation of law;
- (8) Who is receiving inadequate care during the period of time a parent is missing, incarcerated, hospitalized or institutionalized;
- (9) Who is at least age 12, signs the petition requesting jurisdiction under this subsection and is in need of special treatment or care which the parent, guardian or legal custodian is unwilling, neglecting, unable or needs assistance to provide;
- (10) Whose parent, guardian or legal custodian neglects, refuses or is unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to seriously endanger the physical health of the child;
- (10M) Whose parent, guardian or legal custodian is at substantial risk of neglecting, refusing or being unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to endanger seriously the physical health of the child, based on reliable and credible information that the child's parent, guardian or legal custodian has neglected, refused or been unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to endanger seriously the physical health of another child in the home;
- (11) Who is suffering emotional damage for which the parent, guardian or legal custodian has neglected, refused or been unable and is neglecting, refusing or unable, for reasons other than poverty, to obtain necessary treatment or to take necessary steps to ameliorate the symptoms;
- (11m) Who is suffering from an alcohol and other drug abuse impairment, exhibited to a severe degree, for which the parent, guardian or legal custodian is neglecting, refusing or unable to provide treatment; or
- (13) Who has not been immunized as required by s. 252.04 and not exempted under s. 252.04 (3).

It is the contention of Perez-Pena that SG does not meet any of the criteria enumerated above. However, there is significant risk that SG will become the subject of a CHIPS action under Wis. Stats. Sec. 43.13, specifically under subsection 8, which is concerned with whether a child will receive inadequate care because his or her parent is missing, incarcerated or hospitalized. Indeed, the whereabouts of SG's father are unknown and her mother keeps going in and out of custody and inpatient treatment because of her substance abuse issues.

### **CONCLUSIONS OF LAW**

The agency incorrectly terminated Petitioner's Kinship Care benefits.

**THEREFORE, it is**

### **ORDERED**

That the matter be remanded to Perez-Pena/Bureau of Milwaukee Child Welfare/Department of Children and Families to take the necessary steps to issue Petitioner Kinship Care Benefits back dated to July 6,

2012, the date of the notice of non-approval of Kinship Care Payment. The agency shall do this within ten days of November 12, 2012.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

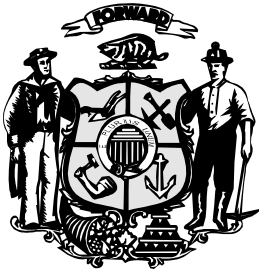
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Corrected under my hand at the City of  
Milwaukee, Wisconsin, this 27th day of  
November, 2012.

---

\sMayumi M. Ishii  
Administrative Law Judge  
Division of Hearings and Appeals



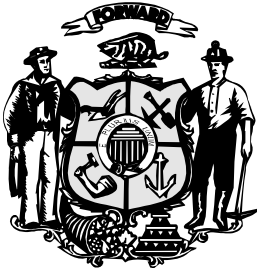
**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

David H. Schwarz  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on November 12, 2012.

Perez-Pena Limited  
DCF - Kinship Care  
DCF - Kinship Care



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

David H. Schwarz  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on November 27, 2012.

Perez-Pena Limited  
DCF - Kinship Care  
DCF - Kinship Care